

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.5805 of 1998

Date: 04-04-2007

Between:

B.Rajanna

Petitioner

And

Depot Manager, Jagtial,
Karimnagar District and two others

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.5805 OF 1998

ORDER:

1. This writ petition has been instituted to declare the action of the respondents in postponing the regularization of services of the writ petitioner by two years by order dated 15-12-1997 as bad and consequently it is also prayed that the corporation be directed to treat the writ petitioner has been regularized from 1988 onwards.

2. Though, there is no representation on behalf of the writ petitioner, I have perused the material and with the assistance of the learned standing counsel for the APSRTC, I have concluded the hearing today.

3. The writ petitioner asserts that he was appointed as a Conductor in the APSRTC on daily wages basis in the year 1988. When his services were terminated for certain irregularities, the writ petitioner appears to have moved the Labour Court which passed an Award setting aside the orders of the termination and directed the writ petitioner to pay a sum of Rs.2,000/- as penalty. The Labour Court has also ordered the corporation to reinduct him in to service as a fresh entrant and the said order was passed in April,1995. Consequently, the writ petitioner was again appointed as a Conductor in the respondent corporation. The writ petitioner asserts that while working at the Jagtial depot of the corporation from 26-09-1995 to 27-10-1995 he fell sick and consequently he did not attend to his duties. A show cause notice has been issued calling for his explanation and he had filed his explanation enclosing thereto a medical

certificate vouching for his sickness. In the interregnum, the personnel officer of the corporation had passed orders on 15-12-1997 imposing the punishment of deferring his regularization by a period of two years. It is this order, which is sought to be impugned herein. The learned standing counsel has also placed before me the file containing the decision taken to impose the punishment on the writ petitioner. The competent authority had perused the Enquiry Officer's report as well as the material collected by the Enquiry Officer as evidence on record and came to the conclusion that the unauthorized absence from the duty for the period of 33 days by the petitioner had caused dislocation of the services and caused inconvenience to the traveling public besides spoiling the image of the corporation and hence he passed the order for deferring regularization for a period of two years.

4. In exercise of Section 45(1) of the Road Transport Corporation Act 1950 with the previous sanction of the Government of Andhra Pradesh, the APSRTC had framed the APSRTC Employees (Classification, Control and Appeal) Regulations, 1967, (in short 'the Regulations') detailing the powers and procedure for enforcing discipline amongst its employees. Regulation 8 thereof authorizes the punishments, which can be imposed for good and sufficient reasons. It will be useful to extract Regulation 8 herein:

" 8. Penalties:

(1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-

- (i) censure;**
- (ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;**
- (iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause(3);**
- (iv) withholding of increments;**
- (v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;**

- (vi) *suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;*
- (vii) *reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;*
- (viii) *removal from the service of the Corporation which does not disqualify from future employment;*
- (ix) *dismissal from the service of the Corporation which ordinarily disqualifies from future employment.*

Explanation: The following shall not amount to a penalty with the meaning of the Regulation:

- (1) *Withholding of increments of an employee for failure to pass a departmental examination or to qualify in certain duties or subjects in accordance with the regulations or orders governing the service or post or terms of his appointment.*
- (2) *Stoppage of an employee at the efficiency bar in the time scale on the ground of his unfitness to cross the bar.*
- (3) *Reversion to a lower service, grade or post of an employee officiating in a higher service, grade or post on the ground that he is considered, after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct.*
- (4) *Reversion to his permanent service, grade or post of an employee appointed on probation to another service, grade or post, during or at the end of the period of probation in accordance with the terms of his appointment or the regulations or resolution governing probation.*
- (5) *Termination of the services:-*
 - (a) *of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment or the regulations or resolution governing probation;*
or
 - (b) *of an employee in accordance with the general conditions of service applicable to permanent or temporary employment, as the case may be; or*
 - (c) *of an employee engaged under an agreement in accordance with the terms of such agreement or*
 - (d) *for reasons of mental or physical incapacity duly certified by a medical officer specified by the Corporation in that behalf.*

2) The penalty of with-holding or forfeiture of the privilege of free passes or privilege ticket orders shall be imposed only in connection with an abuse of the particular privilege and shall not be imposed as an alternative to any other penalty, e.g., reduction of pay. It may however be imposed in addition to any other penalty which may be inflicted in respect of the same act or omission on the part of an employee.

3)The penalty of fine as such shall not be imposed on an employee in the Class. I or Class II Services.

4)The penalty of withholding of promotion may be imposed in addition to any of the other penalties that may be imposed in respect of the same act or omission on the part of an employee.

5)The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders., may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders."

5. A perusal of Regulation 8 of the Regulations would indicate that a number of punishments have been classified and authorized to be imposed, commencing from censure to that of the dismissal. But unfortunately deferment of regularization of the service is not one of those penalties, which has been listed out in Regulation 8 of the Regulations. Therefore, the decision taken by the competent authority to impose the same as a penalty does not fit in within the scope of Regulation 8 of the Regulations. There is hardly any doubt that these Regulations are having statutory force and they are enforceable. It is therefore manifestly clear that the actual punishment imposed against the petitioner namely deferment of regularization of service by a couple of years is not an authorized punishment. No authority can impose any punishment, which has not been specifically authorized by the Regulations. Hence, the impugned action of the respondent corporation in imposing the punishment of deferment of regularization of services by two years is set aside. The writ petitioner is entitled to have his services regularized with effect from the date on and from which the other daily wage employees who are listed out in the order dated 06-01-1997 passed by the Personnel Officer wherein the name of the writ petitioner figures at Serial No.8, are all regularized.

6. However, what has been established by the respondent corporation is that for a continuous period of 33 days the writ petitioner remained absent.

Though there appears to be some justifiable reason or cause behind his absence but nonetheless no organization much less an organization which is involved in rendering public services by way of providing transportation facilities to the general public can ill-afford to allow it's employees to indulge in any conduct which is less than the approved or standard conduct expected of them. While one can take ill suddenly, but the failure to intimate about the illness at the earliest point of time cannot be condoned. In the present case, the writ petitioner was absent from duty for 33 consecutive days. Therefore, the finding of the competent authority that his conduct of absenting from duty for such a long period has caused inconvenience and dislocation to the operations of the respondent organization is a well-merited conclusion. For such unauthorized absence any appropriate minor punishment could have met with ends of justice.

7. I therefore, allow this writ petition by quashing the orders by which the punishment of deferring regularization of services by a period of two years has been imposed, but however, I grant liberty to the respondent corporation to substitute an appropriate minor punishment for the proven misconduct on the part of the writ petitioner.

8. Subject to the above, the writ petition stands allowed. No order as to costs.

NOOTY RAMAMOHANA RAO,J

04-04-2007

Stp